

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #3	CCRB Case #: 201901259	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/06/2019 5:30 AM, Friday, 02/08/2019	Location of Incident: Broadway Junction Train Station stop	Precinct: 75	18 Mo. SOL 8/6/2020	EO SOL 3/23/2021	
Date/Time CV Reported Mon, 02/11/2019 3:26 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/11/2019 3:26 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Petronio Hernandez	00000	919176	TB DT33
2. Officers			
3. SGT Johnathan Diazmojica	02376	954732	TB DT33
4. POM Michael Kolnberger	02201	960767	TB DT33

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ryan Mennor	21397	959815	TB DT33

Officer(s)	Allegation	Investigator Recommendation
A.SGT Johnathan Diazmojica	Force: Sergeant Johnathan Diaz-Mojica pointed his gun at § 87(2)(b)	§ 87(2)(g)
B. Officers	Abuse: Officers searched § 87(2)(b)	§ 87(2)(g)
C.SGT Johnathan Diazmojica	Discourtesy: Sergeant Johnathan Diaz-Mojica spoke discourteously to § 87(2)(b)	§ 87(2)(g)
D.SGT Johnathan Diazmojica	Abuse: Sergeant Johnathan Diaz-Mojica forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g)
E.LT Petronio Hernandez	Abuse: Lieutenant Petronio Hernandez forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)		§ 87(2)(g)
§ 87(4-b), § 87(2)(g)		§ 87(2)(g)
§ 87(4-b), § 87(2)(g)		§ 87(2)(g)
§ 87(4-b), § 87(2)(g)		§ 87(2)(g)
§ 87(4-b), § 87(2)(g)		§ 87(2)(g)

### Case Summary

On February 11, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On February 6, 2019, at approximately 5:30 a.m., § 87(2)(b) entered the Broadway Junction Subway Station, in Brooklyn. He was shouting loudly, and he was approached by Sgt. Jonathan Diaz-Mojica, of Transit District 33, which has a stationhouse in that station. Sgt. Diaz-Mojica had his firearm out and was pointing it at § 87(2)(b) (**Allegation A – Force: § 87(2)(g)**). Sgt. Diaz-Mojica and several unidentified officers took § 87(2)(b) to the ground, and allegedly search through the pockets of his clothing (**Allegation B – Abuse of Authority: § 87(2)(b)**). Afterwards, the officers seated § 87(2)(b) on a bench inside the Transit District 33 stationhouse. During this time, Sgt. Diaz-Mojica allegedly called § 87(2)(b) “Rata,” (**Allegation C – Discourtesy: § 87(2)(g)**). Officers brought § 87(2)(b) to the hospital as an emotionally disturbed person (**Allegations D and E – Abuse of Authority: § 87(2)(g)**).

There was no video footage available for this incident.

### Findings and Recommendations

#### **Allegation (A) Force: Sergeant Johnathan Diaz-Mojica pointed his gun at § 87(2)(b)**

It is undisputed that Sgt. Diaz-Mojica pointed his firearm at § 87(2)(b) § 87(2)(b) (Board Review 01) stated that he walked into the Stationhouse angry at officers from that precinct in general, because of previous interactions he had had with them. He admitted that he was shouting and yelling insults at them, and he refused to tell the CCRB what exactly he was saying at the time, although he stated that he never indicated that he had a weapon in any way. Sgt. Diaz-Mojica approached him with his gun pointed, and ordered him to the ground, where he was handcuffed.

Sgt. Diaz-Mojica (Board Review 02) described that § 87(2)(b) had not entered the stationhouse, but rather was walking into the subway station and entering the turnstiles. He did not see this happen, but heard § 87(2)(b)'s shouting as he came into the subway station. He was loudly shouting profanity at nobody in particular. Lt. Petronio Hernandez, who was at the front desk reviewing closed circuit TV monitors that cover the station mezzanine, shouted out “Gun! He’s got a gun!” Sgt. Diaz-Mojica exited the stationhouse, and saw § 87(2)(b) standing by the turnstiles with a black object protruding from his closed fist, which he was waving around and pointing as if it were a firearm. Sgt. Diaz-Mojica pointed his firearm at § 87(2)(b) as he approached and handcuffed him.

Lt. Hernandez (Board Review 03) § 87(2)(g) He stated that he followed § 87(2)(b) on closed circuit surveillance cameras as he entered the subway station, because he was shouting loudly and cursing and could be heard from the stationhouse. He saw § 87(2)(b) walk through the emergency gate onto the subway platform, and then turn around and walk out the turnstiles. He then reached across his body into the waistband of his pants and pulled out a black object that appeared to be a firearm and pointed it at the token booth behind him. Lt. Hernandez shouted out, “Man with a gun!” and gave officers a description of § 87(2)(b) and where he was. PO Michael Klonberger (Board Review 04) § 87(2)(g) added no additional details to it. He did not see § 87(2)(b) waving an object that appeared to be a gun, but only heard a commotion and responded to it.

Both officers stated that the object in § 87(2)(b)'s hand turned out to be a black cell phone, which he had been holding by the corner so that it protruded from his fist as if it were a firearm.

Under the provisions of Patrol Guide Procedure 221-01 (Board Review 05), officers should draw their firearms only when there is the articulable belief that the potential for serious physical injury is present. A police officer who receives a report of an observation from a fellow officer has that knowledge imputed to him, and may act on it as if he made the observation himself (People v. Crespo, 207 A.D.2d 668 [1994]) (Board Review 14).

§ 87(2)(g), § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation (B) Abuse of Authority: Officers searched § 87(2)(b)**

§ 87(2)(b) alleged being searched, but could not describe it in detail. He stated that, after he was handcuffed and placed on the ground, a group of officers, he could not describe, searched the pockets of his clothing. He stated that Sgt. Diaz-Mojica participated in this search, but could not describe how.

Sgt. Diaz-Mojica denied that any officer ever searched § 87(2)(b) but acknowledged that he conducted a frisk of § 87(2)(b)'s waistband after he was handcuffed and before they determined that the “gun” § 87(2)(b) had been holding was actually his cell phone, for the purposes of finding the gun that Lt. Hernandez had shouted § 87(2)(b) was holding.

Lt. Hernandez also acknowledged this frisk, but denied that § 87(2)(b)'s clothing was searched. Although Lt. Hernandez stated that § 87(2)(b) had a plastic bag with him that an unidentified officer searched, § 87(2)(b) denied having any such bag with him and no other officer recalled § 87(2)(b) having a bag with him. PO Klonberger could not recall any search of § 87(2)(b) taking place.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g), § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation (C) Discourtesy: Sergeant Johnathan Diaz-Mojica spoke discourteously to**

§ 87(2)(b)  
§ 87(2)(b) stated that Sgt. Diaz-Mojica spoke to him after he had been handcuffed as they were waiting for an ambulance to take § 87(2)(b) to the hospital. Sgt. Diaz-Mojica allegedly said to § 87(2)(b) in Spanish, “Tu eres una rata,” which means, “You are a rat.”

Sgt. Diaz-Mojica denied making this statement, and no other officer interviewed recalled him making this statement or any similar statement. Sgt. Diaz-Mojica further said that he had never had any previous interactions with § 87(2)(b) and did not know him, but later learned from other officers that he had a history of randomly shouting at people and being disorderly in the Broadway Junction Train Station.

§ 87(2)(b), § 87(2)(g)

**Allegation (D) Abuse of Authority: Sergeant Johnathan Diaz-Mojica forcibly removed § 87(2)(b) to the hospital.**

**Allegation (E) Abuse of Authority: Lieutenant Petronio Hernandez forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that § 87(2)(b) was acting belligerently and was forcibly removed to the hospital as an emotionally disturbed person. § 87(2)(b) admitted in his CCRB interview that he was angry and came into the stationhouse shouting at the officers and insulting them. He also stated that this continued throughout the process of being handcuffed and searched. He refused to repeat everything that he said during the incident during his CCRB interview.

§ 87(2)(b)'s medical records from § 87(2)(b) were obtained by the CCRB. At the hospital, § 87(2)(b)'s behavior was described as loud and belligerent, he was diagnosed as bi-polar, psychotic, and as having antisocial personality disorder, and he was ordered held for observation. § 87(2)(b) a sedative was administered to § 87(2)(b) (Board Review 07).

Sgt. Diaz-Mojica and Lt. Hernandez consistently described § 87(2)(b)'s behavior as erratic and belligerent. They described him screaming loudly and insulting the officers. They also consistently described § 87(2)(b) behaving as if he had a firearm and pointing his cell phone around pretending it was a firearm. Sgt. Diaz-Mojica stated that he was very concerned that § 87(2)(b) would get into a fight with someone.

§ 87(2)(g)

Under the provisions of Patrol Guide Procedure 221-13 (Board Review 08), a person who is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others is emotionally disturbed, and should be taken to a hospital.

§ 87(2)(g), § 87(2)(b)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been a party to one previous CCRB complaint and has been a victim in three allegations (Board Review 10):
  - § 87(2)(b) § 87(2)(b)
- Lt. Hernandez has been a member of service for 22 years and this is the first CCRB complaint to which he has been a subject (Board Review 11).
- Sgt. Diaz-Mojica has been a member of service for six years and has been a subject of two previous allegations of misconduct in two previous cases, neither of which were substantiated. § 87(2)(g)
- PO Kolnberger has been a member of service for three years, and this is the first CCRB complaint in which he has been a subject (Board Review 20).

#### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- As of July 9, 2019, no Notice of Claim related to this incident has been filed with the New York City Comptroller's Office (Board Review 14).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date